

(b)(6)

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

DATE: NOV 05 2013

OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,



9 Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the AAO on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a high school math teacher for the [REDACTED] where she began working in 2006. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions with progressive post-baccalaureate experience equivalent to a master's degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel and copies of previously submitted exhibits.

Section 203(b) of the Act states, in pertinent part:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –

(A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer –

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions with post-baccalaureate experience equivalent to an advanced degree, as defined at 8 C.F.R. § 204.5(k)(2). The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term “national interest.” Additionally, Congress did not provide a specific definition of “in the national interest.” The Committee on the Judiciary merely noted in its report to the Senate that the committee had “focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . .” S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, P.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states:

The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the “prospective national benefit” [required of aliens seeking to qualify as “exceptional.”] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

*In re New York State Dept of Transportation*, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm’r 1998) (*NYSDOT*), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien’s past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner’s assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term “prospective” is included here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on June 29, 2012. In an introductory statement, the petitioner stated:

Throughout my six (6) years at the [REDACTED] I was able to teach Algebra & Data Analysis, HSA [High School Assessment] Mastery, Algebra 2, HSA Bridge, Geometry and AP-Statistics. The greatest contribution that I had is in the area of Algebra & Data Analysis and HSA Bridge. In my first school, [REDACTED] I was able to increase student achievement from 12.5% in 2007 to 45.6% in 2008 with a steady increase until 2010. . . . My second big



contribution lies in the area of Algebra Bridge projects, which is a major requirement for senior graduation. Since it was first implemented in 2009 up to present, I have served as the Bridge Project Monitor. My main role is to assist seniors who were not successful in passing the Algebra HSA, fulfill graduation requirements by completing Bridge Projects. I have been instrumental in increasing graduation rates of the three schools that I have worked for: [REDACTED]

I also hold an Advanced Professional Certificate for grades 7 – 12 making me a highly qualified teacher in the area of mathematics. . . . I majored in mathematics from college all the way up to the doctoral level.<sup>2</sup> This makes me a master of both content and strategies. . . . I can facilitate seminars on the new instructional model that the school district plans to fully implement this school year to address the major shifts in the way mathematics is taught in the classroom. By being a teacher leader, I was able to train teachers in the district by organizing a professional learning community (known as *The Works*), an avenue where teachers share best practices in the classroom. This is the main reason why I was awarded as one of [REDACTED] 2012 Teacher of the Year, a recognition, which affirms that I am making a difference not only [in] the lives of the students I teach but also [in] the lives of the teachers that mentor them to be fully prepared for college life.

. . . [In international testing,] U.S. twelfth graders scored below the international average and among the lowest of the 21 participating nations in both mathematics and science general knowledge. . . . These findings revealed that there is a huge achievement gap happening from the middle grades onward to the high school level. One of the ways to bridge the gap is by doing major curriculum change which justifies the birth of the new Common Core State Curriculum. Another way is to place highly qualified teachers in the classroom to ensure the success of implementing major curriculum shifts.

A statement from counsel contains sections that closely match parts of the petitioner's statement. Counsel stated:

After six years working for the school system, Petitioner has made achievement gains on the three schools that she has worked with, despite the challenges of having students coming from broken homes, kids that are victims of street violence and substance abuse. Petitioner has contributed to curriculum writing and revisions to improve [REDACTED] state of education. She has also trained teachers by facilitating numerous systemic professional development activities.

<sup>1</sup> *Sic.* The school's actual name is the [REDACTED].

<sup>2</sup> An academic credential evaluation in the record indicates that the petitioner holds one degree equivalent to a United States baccalaureate degree; a "graduate diploma" equivalent to "two years of graduate study"; and was enrolled in a doctoral program, but did not receive a degree.

The United States of America need highly qualified teachers in the area of Mathematics and Petitioner is one of them. Combining her teaching experience in the Philippines and the USA, Petitioner has made achievement gains and she has contributed to improving graduation rates.

*NYSDOT* states: “while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act.” *Id.* at 217 n.3. The decision includes the term “elementary school” as an illustrative example; the same reasoning also applies to secondary school teachers. Thus, *NYSDOT* acknowledged the intrinsic merit of teaching, but denied that the work of one classroom teacher produces benefits that are national in scope.

To qualify for the waiver, the petitioner must establish that her work has had, and will continue to have, significant impact and influence beyond the local level. Exceptional ability, defined as “a level of expertise significantly above that ordinarily encountered,” is not grounds for the waiver, and therefore it cannot suffice for the petitioner to show how well she has done with her own students.

The record shows that the petitioner has contributed to curriculum development at the district level, which is inherently local, and there is no evidence that other districts have adopted the petitioner’s work. In contrast, the petitioner mentioned the Common Core curriculum which school systems are implementing at a national level. In this way, contributions to education can be national in scope, but the petitioner must show that her contributions reach that level.

The initial filing of the petition included several letters from individuals at [REDACTED] in the Philippines, where she was an assistant professor from 1999 to 2006, and from current and former [REDACTED] teachers and administrators, praising the petitioner’s abilities as a teacher. For instance, [REDACTED] now a program administrator for [REDACTED] was previously the principal at [REDACTED]. Ms. Rock stated that the petitioner’s “contributions to increasing our Algebra, High School Assessments were monumental. . . . During her tenure, we saw an increase in students’ attendance, behavior performance and academic attainments.”

[REDACTED] who taught math with the petitioner at [REDACTED] before moving to [REDACTED] stated that, while the petitioner was his mentor: “Our collaborative efforts at [REDACTED] enabled us to see an increase in the percentage of students passing from a 12.5% passing rate in 2007 to a 45.6% passing rate in 2008, 46.9% in 2009, and 50% in 2010 also while increasing in number of students each year.”

[REDACTED] principal of the [REDACTED] stated:

[The petitioner] has been the instructor for the 11<sup>th</sup> grade geometry class and the primary point of contact and expert resident in the Bridge projects for graduating seniors. She has been instrumental in training other teachers in the Bridge process



and oversaw over 100 Bridge projects. She directly impacted the majority of the seniors regarding their requirements to graduate in this area.

Antony Kironji, a science teacher at the [REDACTED] stated that the petitioner "is dedicated to doing whatever it takes to get our students to succeed; almost every day [the petitioner] stayed more than an hour after school volunteering her time to coach the students on improving their math skills."

Several of the petitioner's students wrote "reflection papers" expressing their opinions about the petitioner as a math teacher. The letters are highly favorable, praising the petitioner's patience, persistence and desire to help the students understand the subject matter. The letters show that the petitioner is a popular, respected and effective teacher, but this is not the threshold for the national interest waiver.

The petitioner submitted copies of several certificates that she received during her teaching career. The petitioner did not submit a copy of a [REDACTED] certificate, which the petitioner claimed to have received for "organizing a professional learning community." The certificate that comes closest to that description named the petitioner a "2012 Outstanding Teacher . . . [i]n recognition of outstanding service to [her] students." Other certificates express appreciation for her involvement in various activities and show that the petitioner received outstanding performance ratings on several occasions, while still others mark her participation in various conventions and other gatherings.

The petitioner submitted a copy of [REDACTED] of [REDACTED] a paper she wrote for the July 2005 issue of *Enquiry*, a publication issued by that university. In the paper, the petitioner did not claim credit for developing [REDACTED] attributing it instead to "the department head." The record does not indicate that this paper had any influence on mathematics education outside of the university where the petitioner was studying at the time she wrote it.

On December 10, 2012, the director issued a request for evidence. The director instructed the petitioner to submit evidence to "establish . . . a past record of specific prior achievement with some degree of influence on the field as a whole."

In response, the petitioner asserted that her superior credentials qualify her for the waiver. The petitioner observed that she holds an Advanced Professional Certificate, which requires "3 years of full-time professional school-related experience" and "[a] master's degree, or a minimum of 36 semester hours of post-baccalaureate course work." The petitioner also noted her "16 years of teaching experience." Academic degrees, experience, and certification can contribute to a finding of exceptional ability, under the USCIS regulations at 8 C.F.R. §§ 204.5(k)(3)(ii)(A), (B), and (C), respectively. As noted above, aliens of exceptional ability remain subject to the statutory job offer requirement, and therefore elements of an exceptional ability claim do not show eligibility for the waiver. There is no blanket waiver for teachers with advanced certification, experience, or subject-matter degrees.

The petitioner quoted the following passage from a study, "Separation of Degrees: State by State Analysis of Teacher Compensation for Master's Degrees": "Master's degrees in math and science have been linked to improved student achievement in those subjects, but 90 percent of teachers' master's degrees are in education programs – a notoriously unfocused and process-dominated course of study." From that statistic, the petitioner concluded: "I belong to the 10 percent of the teacher population in the entire nation who has a master's degree in Mathematics Education." The petitioner's claim, however, does not follow from the quoted passage. That passage did not distinguish between degrees in "mathematics education" and "education." Rather, it distinguished between "degrees in math and science" on the one hand, and "degrees . . . in education programs" on the other. The petitioner's two postsecondary degrees are both in the field of "mathematics education," i.e., an "education program," rather than in "mathematics." Her graduate project, reproduced in the record, contains no mathematics; instead, it discusses educational strategy.

With regard to the assertion that she "has a master's degree in Mathematics Education," the educational evaluation submitted with the petition does not indicate equivalency with a United States master's degree. The petitioner's Maryland Educator Certificate for 2011-2016 lists her "Highest Degree" as "Bachelor's."

The petitioner stated:

I am a facilitator of math workshops and a teacher leader. I have conducted various seminars in math education and assessment in the Philippines and these are all research data-driven presentations. I also facilitate The Works, a professional learning community, and other systemic professional development activities in mathematics at the . . .

In 2008, I was chosen from among thousands of teachers in the school district to be included in a group of teacher-mentors. We were trained to plan and facilitate not only systemic-based professional development activities but also to establish professional learning communities, known as The Works. These are monthly programs that run from September – April, aimed at providing teachers an avenue so that they can share insights, ideas, and experiences to improve the teaching and learning of mathematics.

The petitioner's mentoring work gives her influence over other teachers in addition to her students. This impact, however, is still limited to . . . Regarding her curriculum writing, the petitioner stated that she "worked for several months to develop the drafts of the Algebra 2 and the HSA Algebra & Data Analysis curricula. . . . These contributions are classified [as] national in scope as use of the curricula are not only limited to a specific geographical location like Baltimore or Maryland, they have been published for public use." The petitioner cited no evidence to show that any jurisdiction outside of . . . had adopted the curricula that the petitioner co-wrote (along with 28 other named writers). The assertion that other jurisdictions might use the curricula is speculative.



The petitioner asserts that her qualifications exceed the minimum qualifications for a teacher at [REDACTED]. The statute and regulations do not limit the job offer requirement to minimally-qualified foreign workers, nor do they state that a worker who possesses more than the minimum qualifications is therefore eligible for the waiver. Even if one's abilities rise to the level of exceptional, the job offer requirement remains.

The petitioner asserted that, as an assistant professor at [REDACTED] in the Philippines, she "was able to produce hundreds of educators." As examples, the petitioner submitted letters from four individuals whom the petitioner trained at "the college level and graduate school." The waiver concerns prospective national benefit to the United States. The petitioner is no longer a college-level instructor, and therefore her past efforts in the Philippines in this regard do not establish prospective (future) benefit to the United States. The authors of the four letters, like other witnesses quoted in the record, praised the petitioner as dedicated and hard-working, but did not establish that the petitioner's work has had wider impact and influence.

In a separate statement, the petitioner stated:

Attached herewith is a copy of my research project which deals [with] SCHEMA-BASED APPROACH IN TEACHING MATHEMATICS. The main output of the project are [sic] five lessons in math employing the schema-based strategy. I intend to replicate this research here in the USA because all 48 states [sic] have adopted the Common Core State Standards (CCSS) as their way of improving the state of math and science education in the country. . . .

One essential component of the CCSS is the development of students' creative problem solving skills. This is precisely what my research paradigm emphasized: the schema-based approach explains how students represent problems, and presents the processes underlying the construction of representations as a way to understand what the learner can do to make progress towards the solutions of the problems. Further, it provides a significant alternative perspective about why a learner fails to solve a problem and what can be done to help him. . . .

With the schema-based approach, algebra can be taught to students even in the fourth grade level. It is for this reason that I would like to continue with my research study entitled HELPING STUDENTS WITH LEARNING DISABILITIES [sic] EMBRACE THE COGNITIVE DEMAND OF THE COMMON CORE STATE STANDARDS THROUGH THE SCHEMA-BASED APPROACH.

The accompanying document, "Development of Selected Mathematics Lessons Using the Schema-Based Approach," dates from 2001; the petitioner wrote it "in partial fulfillment of the requirements for the graduate diploma in mathematics education." (It did not focus on students with learning disabilities.) The petitioner's initial submission contained no indication that the petitioner wished to resume this research, or that her employment with [REDACTED] would allow her to do so. The petitioner



did not establish that her graduate student project led to any peer-reviewed publications or otherwise influenced math education in the Philippines or elsewhere.

The petitioner submitted several letters from teachers and administrators currently or formerly in Baltimore. Most of these letters are from June 2012 or earlier; some of them duplicate previous submissions. These letters praised the petitioner's performance at the local level. The only new letter is from [REDACTED] interim executive director of the [REDACTED] Office of Teaching and Learning, who stated:

[The petitioner] is a wonderful asset to the Office of Teaching and Learning as she serves as a facilitator of systemic professional development activities. . . . [The petitioner] facilitate[s] the annual program called Math Works, a professional learning community designed to provide an avenue for teachers to share ideas, insights and experiences to improve the teaching and learning of mathematics. . . .

In 2009, she was chosen from among dozens of teachers to participate in the writing of the drafts and the final versions of the Algebra 2 and the HSA Algebra and Data Analysis curricula. She masterfully demonstrated her understanding of curriculum development, classroom rigor and instructional program delivery as evidenced by her strong academic background and a wide array of experiences as a mathematics educator. The two curricula are still being used by the district until now.

[The petitioner] is also a dedicated classroom leader. . . . Her efforts did not go unnoticed as she was awarded as one of the Outstanding Teachers of the district for SY 2011-2012.

The director denied the petition on March 28, 2013. The director acknowledged the witness letters and quoted from some of them, but found that these letters "contain general praise for the petitioner." The director stated: "The national interest waiver . . . is a special benefit over and above the basic classification sought, and the threshold for that benefit is well above simply being competent and qualified to do one's job." The director concluded: "The petitioner[']s impact is limited to a local impact. The petitioner has not established that Congress intended the national interest waiver to serve as a blanket waiver for all teachers."

On appeal, the petitioner submits a third statement. This statement consists entirely of passages copied from the petitioner's two previous statements, with the petitioner's previous reference to "six (6) years at the [REDACTED] changed to "seven (7) years" with that employer. Similarly, copies of previously submitted letters and certificates duplicate earlier submissions, and therefore add nothing substantive to the record.

The director's decision included the following paragraph:

USCIS sent a request for evidence on July 3, 2012 to the petitioner in order to obtain more specifics to establish the benefit sought. The response was received on

September 25, 2012 and the petitioner submitted a letter discussing her qualifications; copies of her performance evaluations from 1990 to 2012; certifications, testimonial and photographs evidencing her special skills on civic duty and leadership; and various articles about education.

On appeal, counsel states that the above dates are incorrect, and that the listed exhibits do not match what is in the record. It appears that the director copied language from another decision and did not make the necessary changes for the passage to conform to the proceeding at hand. The petitioner, however, has not shown that this error led to the denial of the petition. The denial notice contains several correct references to the record, naming witnesses and quoting their letters as well as identifying the petitioner's graduate project. Therefore, it is evident that the director relied on the correct record of proceeding when rendering the decision.

Counsel states that the petitioner's graduate project "is the very same research project that [the petitioner] alluded to being replicated in the entire nation." Counsel then quotes at length from "the CCSS [Common Core State Standards] website." The petitioner has not established that her work formed the basis for the Common Core State Standards, or otherwise explained how her graduate research relates to those standards. Counsel quotes the petitioner's assertion that "[a]lgebra can be taught to students in the fourth grade" using the petitioner's "schema-based approach." The petitioner does not establish that her research has had a national impact. Counsel states: "if this system of learning Math under the Schema-Based Approach in teaching Mathematics [is] replicated and adopted in the national level, it can effectively improve the implementation of the No Child Left Behind Act legislation." This assertion is speculation. Existing national impact can be a basis for a waiver, but it does not follow that the petitioner already qualifies for the waiver because her system might be adopted, and influential, in the future. The petitioner has provided no evidence that school systems plan to adopt her work on a national scale.

Counsel asserts that the petitioner "was able to produce hundreds of educators." Counsel refers to the petitioner's prior work at [REDACTED] in the Philippines, where the petitioner taught students in a teacher training program. The basic intent of such a program is to train teachers; their graduation, and subsequent employment as teachers, are the expected results of a teacher training program rather than evidence that the petitioner stands apart from others in her profession. The petitioner is no longer a professor at a teacher training college, and her past success in that occupation is not evidence that she qualifies for a waiver in her current occupation. Counsel quotes the petitioner's assertion that only "a rare group of teachers" holds this variety of experience. The petitioner has not submitted evidence to support this assertion. Furthermore, membership in a small group does not necessarily translate into impact and influence.

Counsel contends that the petitioner's work is national in scope because it "can be adopted . . . in at least 48 states of our country." This assertion pertains to the petitioner's research work, rather than her teaching duties at [REDACTED]. She filed the petition not as a researcher, but as a teacher. Only after the director issued the request for evidence did the petitioner assert an intention to resume and adapt the research that she had conducted more than a decade earlier as a graduate student. A petitioner may not make material changes to a petition that has already been filed in an effort to make an



apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998).

With respect to the petitioner's teaching duties, counsel asserts that "improving the quality of the potential workforce of our nation will benefit the US Economy." The petitioner has not shown that the work of one high school math teacher has had, or will have, a significant effect in this regard.

Counsel asserts that "many of the [petitioner's] essential qualities . . . [can] not be articulated in [the] labor certification process." Counsel states that the waiver claim rests on the petitioner's "proven record of achievement and her unique and innovative set of skills, knowledge and background." The petitioner's record, as documented in the materials submitted, does not establish that the petitioner's teaching work in the United States has had an effect outside of [REDACTED]. Within [REDACTED] the petitioner's principal impact has been in her own classroom, and in contributing to curriculum revisions. The record does not establish that these revisions have improved public education in [REDACTED] or attracted outside attention that would contribute to their adoption on a wider scale.

The petitioner has not established a past record of achievement at a level that would justify a waiver of the job offer requirement. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that the petitioner's influence be national in scope. *NYSDOT* at 217, n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219, n.6 (the alien must have "a past history of demonstrable achievement with some degree of influence on the field as a whole.").

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The AAO will dismiss the appeal for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

**ORDER:** The appeal is dismissed.